IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16708 of 2004

Between:

Kavitha Memorial Educational Society,
Khammam (Reg.No. 1317/2001),
Retd. by its Secretary and Correspondent,
P.Ushakiran Kumar, S/o P.Gopal Rao,
aged about 38 yrs.
R/o. H.No. 4-2-234/A, Ashoknagar, Khanapur Haveli,
Khammam (Urban) Mandal, Khammam District.

..... PETITIONER

AND

1 The Govt. of A.P. rep by its Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad.
2 The Revenue Divisional Officer, Khammam, Khammam District.
3 The Mandal Revenue Officer, Khammam(Urban) Mandal, Khammam District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of writ of Mandamus declaring the action of the Government and its officers in seeking to evict, dispossess and demolish the 4 storied building of the petitioner society constructed after obtaining necessary required permission from the competent authority, in which the petitioner is running educational institutions for under-graduates and postgraduates, by resorting to summary enquiry contemplated under A.P. Land Encroachment Act, 1905 and the consequential notice issued by the respondent No. 3 in his Rc.No. B/9724/04, Dt. 1-9-2004 as illegal and void without power or authority and consequentially to direct the respondents to refrain from in any way interfering with the possession and

enjoyment of the building and the land in question of the petitioner society.

Counsel for the Petitioner:MR.M.SUDHIR KUMAR

Counsel for the Respondents: GP FOR REVENUE

The Court at the stage of admission made the following ORDER:

Admittedly, the petitioner-society claims to have purchased 1404 sq.yards of site in Plot Nos.1, 2 and 3 under three registered documents and after obtaining necessary permission from the Executive Officer, Khanapuram Haveli Gram Panchayat, constructed a four storied building in the said site and running an institution.

It is the case of the petitioner-society that the Gram Panchayat and revenue authorities have conducted joint survey before issuing no objection certificate dated 30-11-2001 for obtaining construction permission. It is stated that between the land purchased by the petitioner-society to an extent of 375 sq.yards by document No.1107 of 2001, dated 28-02-2001 and the NSP road, the earth road (Donka) leading to Kaikondaigudem was in existence, which was now occupied by some third parties and also making constructions. The same was widely reported in the newspapers. In view of the same, the authorities issued the impugned notice, dated 01-09-2004 under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short “the Act”) alleging that an extent of 125 sq.yards of donka was illegally occupied by the petitioner-society, where four-storied building was constructed. Then, the petitioner-society submitted its detailed explanation on 08-09-2004 to the third respondent and also filed the present writ petition contending that the respondents have no jurisdiction to initiate the proceedings under the Land Encroachment Act as held by the Apex Court.

The learned senior counsel for the petitioner-society argued that the petitioner-society and its predecessors are in longstanding possession and 125 sq.yards, which is said to have been occupied by the petitioner-society, was not in its occupation but in fact, it was occupied by some third parties and also making constructions. Instead of taking action against those people, the respondents issued the impugned notice to the petitioner-society, which is nothing but harassment.

It is denied that the petitioner-society occupied 125 sq.yards of donka illegally as alleged in the writ petition. To know whether such donka is in occupation of the petitioner-society or third parties, the respondents are bound to consider the explanation offered by the petitioner-society in proper perspective and in the light of the survey conducted earlier and no objection certificate dated 30-11-2001 issued by them to the petitioner-society. In view of the same, the respondents have to pass speaking order only after conducting fresh survey as to whether 125 sq.yards, which is shown as donka, is occupied by the petitioner-society or not. In the event, if any adverse orders are passed against the petitioner-society, the same shall not be implemented until the statutory period for filing of the appeal is expired from the date of service of the said order. However, the petitioner can appear before the respondents and demonstrate that no part of the land belongs to the Government was occupied by it.

The writ petition is accordingly disposed of. No costs.

17th SEPTEMBER, 2004.

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To

1 The Principal Secretary, Govt. of A.P., Revenue Department, Secretariat Buildings, Hyderabad.
2 The Revenue Divisional Officer, Khammam, Khammam District.
3 The Mandal Revenue Officer, Khammam(Urban) Mandal, Khammam District.
4 Two CCs to the Government Pleader for Revenue, A.P.High Court Buildigns, Hyderabad (OUT)
5 Two CD copies.